

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. UNDERWRITERS INSURANCE COMPANY,

Docket No.: 08-CV-2780  
(RJS)

Plaintiff,

-against-

**DECLARATION**

LIBERTY SQUARE REALTY, INC., ALEJANDRO L.  
LUCERO-VASQUEZ and THE CITY OF NEW YORK

Defendants.  
-----X

**STEVEN VERVENIOTIS**, an attorney duly admitted to practice law before this Court and aware of the penalties of perjury, declares the following:

1. I am a member of the Bar of this Court and am a partner with the firm of Miranda Sambursky Slone Sklarin Verveniotes, LLP, attorneys for plaintiff U.S. UNDERWRITERS INSURANCE COMPANY ("U.S. Underwriters"), in the above-entitled action. As such, I am familiar with all the facts and circumstances in this action.

2. I submit this declaration in support of U.S. Underwriters' motion for summary judgment seeking a declaration from the Court that U.S. Underwriters is not obligated to defend and indemnify LIBERTY SQUARE REALTY INC. ("Liberty") or ALEJANDRO L. LUCERO-VASQUEZ ("Lucero-Vasquez") or any other party as to the claims asserted in the underlying personal injury action captioned Alejandro L. Lucero-Vasquez v. City of New York and Liberty Square Realty Corp., pending in the Supreme Court for the State of New York, Bronx County, under Index Number 17941/07, (hereinafter underlying action").

3. I submit this declaration to place before the Court the pleadings and other documents obtained through discovery relevant to the motion in this matter.

### **PLEADINGS**

4. On or about March 17, 2008, U.S. Underwriters commenced this action by filing a declaratory judgment complaint with the Court. See Ex. "A" for Complaint in this action.

5. On or about April 15, 2008, the City of New York interposed its Answer. See Ex. "B" for City's Answer.

6. On or about May 5, 2008, U.S. Underwriters interposed its Answer to Liberty-Square's counterclaims. See Ex. "C" for U.S. Underwriters' Answer to counterclaims.

7. On or about May 7, 2008, Liberty interposed its Answer. See Ex. "D" for Liberty's Answer.

8. On or about May 9, 2008, Lucero-Vasquez interposed his Answer. See Ex. "E" for Lucero-Vasquez's Answer.

9. On or about October 10, 2008, plaintiff dismissed the case as against the City of New York pursuant to a stipulation which was "So Ordered" by the Court. In exchange for the dismissal, the City of New York agreed to be bound by any coverage determination made in this action. See Ex. "F" for this Stipulation.

10. On or about May 22, 2008, U.S. Underwriters served a Notice to Produce upon both Liberty and Lucero-Vasquez. See Ex. "G" for U.S. Underwriters' Notice to Produce.

11. On or about October 10, 2008, Liberty provided a response to U.S. Underwriters' Notice to Produce. See Ex. "H" for Liberty's written response to U.S. Underwriters' Notice to Produce.

### **DISCOVERY**

12. On or about October 13, 2008, U.S. Underwriters served a Notice to Admit upon Liberty and Lucero-Vasquez. See Ex. "I" for the Notice to Admit.

13. On or about November 7, 2008, Lucero-Vasquez provided responses to U.S. Underwriters' Notice to admit. See Ex. "J" for Lucero-Vasquez responses to the Notice to Admit.

14. On or about November 6, 2008, Liberty provided responses to U.S. Underwriters' Notice to Admit. See Ex. "K" for Liberty's responses to the Notice to Admit.

15. On or about April 2, 2009, U.S. Underwriters served a subpoena on Liberty's insurance broker, Fairmont Insurance Brokers, Ltd. ("Fairmont"). See Ex. "L" for Subpoena on Fairmont.

16. On or about, May 1, 2009, Fairmont provided documents responsive to U.S. Underwriters' subpoena. See Ex. "M".

17. On or about May 5, 2009, U.S. Underwriters provided all parties with a copy of the documents provided by Fairmont. See Ex. "N".

18. The documents provided by Fairmont show that on May 22, 2006, Trans World sent a quote to Fairmont regarding the renewal of Liberty's policy CL3078836A which was to expire on August 20, 2006. See Ex. "O".

19. On July 24, 2006, Fairmont submitted an application on behalf of Liberty for a policy to cover the period from August 20, 2006 through August 20, 2007. See Ex. "P".

20. On August 1, 2006 Trans World submitted a binder to Fairmont for a renewal of policy CL3078836A, which was given policy number CL3078836B; the Binder indicated that CL3078836B had a term from August 20, 2006 through August 20, 2007 and both the L-500 and L-278 exclusions were to be included with the policy. See Ex. "Q".

21. On September 6, 2006, Fairmont sent a letter to Liberty with a copy of policy CL3078836B. In its letter, Fairmont informed Liberty that CL3078836B was the renewal of a

similar policy. The declarations page from the the policy Fairmont sent to Liberty with the September 6, 2006 letter included both the L-500 and L-278 endorsements. See Ex. "R".

22. On or about May 7, 2009, a deposition of Alejandro L. Lucero-Vasquez was conducted. A copy of the transcript of Lucero-Vasquez's deposition is attached as **Ex. "S"**.

23. On or about May 8, 2009, a deposition Liberty Square Realty, Corp. was conducted through one of its principals, Henry Weinstein. A copy of the of Liberty's deposition is attached as **Ex. "T"**

24. After Liberty's deposition, U.S. Underwriters sent several requests for documents, which U.S. Underwriters had previously discussed in discovery, including a written contract between Liberty and Eastern. Liberty has not responses. See Ex. "U" for U.S. Underwriters' letters.

25. Finally, on June 22, 2009, Liberty's Counsel produced an additional seven documents through email. See Ex. "V" for the email and additional documents.

26. Included with Liberty's June 22, 2009 production were a certificate of Workers' Compensation Insurance from the New York State Insurance Fund naming Eastern Waterproofing Corp. as the insured and Liberty Square Realty Inc. as the Certificate Holder. Liberty also produced an ACORD Insurance Binder for a CGL policy issued to Eastern Waterproofing Corp. by "Adriatic." See Ex. V.

27. Liberty's June 22, 2009 production also included 3 Work Permit Data Sheets issued by the NYC Department of Buildings. The permits were issued to Baljit Gill of Eastern Waterproofing Corp. for removal of debris and minor interior repairs and demolition. See Ex. V.

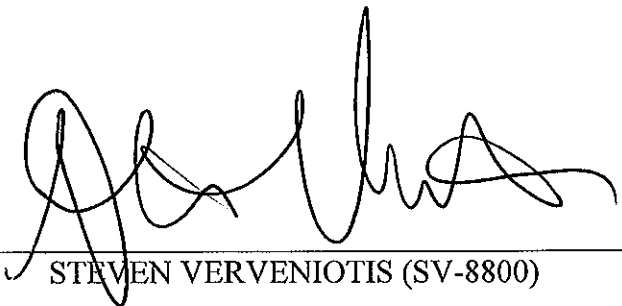
28. Finally, the June 22, 2009 production contained two document regarding a Surety for Eastern Waterproofing's work. See Ex. V.

29. Pursuant to an Authorization provided by counsel for Lucero-Vasquez, U.S. Underwriters obtained a copy of his Workers' Compensation file, which included an OC-400 form in which Lucero-Vasquez as "Claimant" names Eastern Water Proofing Corp. as his employer. Lucero-Vasquez signed the OC-400 form. See Ex. "W" for a copy of the OC-400 form signed by Lucero-Vasquez.

30. As discussed in greater detail in U.S. Underwriters' accompanying 56.1 Statement, Affidavit of Carol Ann Myrtetus and Memorandum of Law, the above-referenced evidence provides the grounds in which U.S. Underwriters disclaimed.

**WHEREFORE**, it is respectfully requested that the Court grant plaintiff U.S. Underwriters Insurance Company's motion for summary judgment declaring that it has no obligation to defend or indemnify Liberty Square Realty Corp. or Alejandro L. Lucero-Vasquez in the underlying action, together with such other and further relief as the Court deems just and proper.

Dated: Mineola, New York  
June 24, 2009



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STEVEN VERVENIOTIS (SV-8800)

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NASSAU     )

Leila Krim, being duly sworn, deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides in Long Beach, New York.

That on June 25, 2009, deponent served the within **NOTICE OF MOTION AND  
DECLARATION** upon:

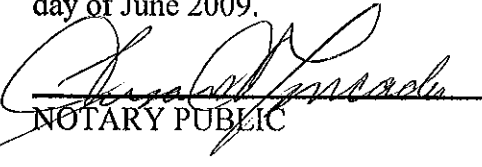
Yoram Nachimovsky, Esq.  
Counsel for LIBERTY SQUARE  
299 Broadway, Suite 605  
New York, NY 10007

GREENBERG & STEIN  
Ian Asch, Esq.  
Attorney for Defendant  
LUCERO-VASQUEZ  
275 Madison Avenue, Suite 1100  
New York, NY 10016

the addresses designated by said attorney(s) for that purpose by depositing a true copy of same  
enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive  
care and custody of the United States Post Office Department within the State of New York.

  
\_\_\_\_\_  
Leila Krim

Sworn to before me this 25<sup>th</sup>  
day of June 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC

SUSAN C. MONCADA  
Notary Public, State of New York  
No. 01MO6166372  
Qualified in Queens County  
Terms Expires May 21, 2011